

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DEREK FOLLEY,

Petitioner, : Case No. 3:22-cv-065

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

KEITH J. FOLEY, Warden,

:
Respondent.

DECISION DENYING PETITIONER'S MOTION TO VACATE

This habeas corpus case, brought *pro se* by Petitioner Derek Folley under 28 U.S.C. § 2254, is before the Court on Petitioner's Motion (ECF No. 195) to Vacate on the Basis of Inadvertence or Mistake the Magistrate Judge's Report and Recommendation of October 14, 2022 (the "Report," ECF No. 177). Folley moves to vacate the Report under Fed.R.Civ.P. 60 because "The Petitioner" never intended for "The Petitioner's Traverse" to be a response for "The Respondent's Motion To Dismiss" in this judicial proceeding. This was a clerical mistake manifested by the Clerk Of Court." (ECF No. 195, PageID 2322).

Petitioner's cited authority is Fed.R.Civ.P. 60 which applies only to final judgments, not interlocutory matters. A Report and Recommendation is interlocutory and not subject to vacation under Rule 60. The Motion to Vacate is DENIED.

October 28, 2022.

s/ *Michael R. Merz*
United States Magistrate Judge